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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,450	12/05/2003	Christina Khoo	7129-00	1031

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EXAMINER

FORD, ALLISON M

ART UNIT PAPER NUMBER

1651

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/729,450

Applicant(s)

KHOO ET AL.

Examiner

Allison M. Ford

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15, 17 and 19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: applicants arguments are not found persuasive.

Applicants reiterate their arguments made in response to the non-final rejection. Specifically, applicant argues the examiner has not established a prima facie case of obviousness. Applicants argue that Shields, Jr et al do not teach or suggest ameliorating diarrhea in a mammal having a GI tract inflammation; applicants also state that Shields, Jr et al is silent with regards to specific amounts of glutamine or omega-3-fatty acids contained in the described diets. Applicants argue that neither Wadsworth et al nor Klimberg et al overcome the deficiencies of Shields, Jr et al because neither Wadsworth et al nor Klimberg et al teach ameliorating diarrhea in a mammal. Applicants further argue that Chandler et al do not teach or suggest the claimed combination of components in the claimed concentrations. Applicants also argue that their examples demonstrate unexpected results relating to the exact concentrations of the claimed components, thus improper hindsight would be required to arrive at the claimed concentrations.

Regarding the claims to the composition, while applicant argues that none of the cited reference alone, or in combination disclose the exact concentrations and percentages of the claimed components, and that examiner has relied upon improper hindsight to arrive at the claimed concentration ranges, it is noted that applicant has still failed to show any criticality related to the claimed concentrations. The example in the specification fails to describe concentrations of the components, and thus fails to persuade that the claimed concentration ranges are critical. Thus, it remains that the concentrations of each of the individual components would be routinely optimized by one of ordinary skill in the art in preparing the composition.

Regarding the claims to the method of treating a mammal, though none of Shields, Jr, Wadsworth, Klimberg nor Chandler et al, specifically state "ameliorating diarrhea in a mammal" all four do teach improving gastrointestinal health in animals that are either susceptible to GI inflammation, or in animals which are experiencing diminished gastrointestinal health using the claimed composition ingredients. Thus due to the teachings on each claimed ingredients' individual beneficial effect on gastrointestinal health, it remains that combination of the individual ingredients into a single composition for treatment of gastrointestinal disorders would flow logically from their having been individually taught in the art. Though applicants argue that ameliorating diarrhea would not be an inherent result, relying on their 'unexpected results' in Example 2, as discussed above, the results were not found to be 'unexpected' and thus it remains that administration of the diet taught by the prior art, for purposes of restoring and/or improving and/or maintaining gastrointestinal health in a mammal, would inherently ameliorate diarrhea in a mammal. It is reiterated that under the principles of inherency, if a prior art method, such as administration of the diets disclosed in the references, in their normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art method. When the prior art method is the same as a method described in the specification for carrying out the claimed method, it can be assumed the method will inherently perform the claimed process. See *In re Best*, 562 F. 2d, 1252, 1255, 195 USPQ 430, 433 (CCPA 1977) and *Ex parte Novitski*, 26 USPQ 2d 1389 (Bd. Pat. App. & inter. 1993).



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PRIMARY EXAMINER